THE HON'BLE SRI JUSTICE V.V.S.RAO

-

WRIT PETITION Nos.17759 of 2005

(AND BATCH - 18133, 18134,18192, 18516 and 18518 of 2005)

DATED 09.09.2005

-

BETWEEN

Thatipalli Shankera Lingam, S/o Muttaiah,

R/o H.No.6-5-92, Machili Bazar, Hanamkonda,

Warangal District and others.

…PETITIONERS

AND

The Principal Secretary, State of A.P.,

Revenue Department (UC-II), Secretariat,

Hyderabad and others.

…RESPONDENTS

THE HON'BLE SRI JUSTICE V.V.S.RAO

-

WRIT PETITION Nos.17759, 18133, 18134,

18192, 18516 and 18518 of 2005

COMMON ORDER:

The background of these cases is common. The submissions made by the learned counsel for the petitioners are common and therefore, it is expedient to dispose of all the six writ petitions by this common order.

Except in W.P.No.18134 of 2005, the other five writ petitions are filed making similar allegations. The allegations made in W.P.No.17759 of 2005 may be noticed. There are six petitioners, their case is as follows. The land admeasuring Acs.7.15 gts

comprised in S.Nos.150/2, 175/1, 179/2, 181/2 and 182/2 of Shyampet village, Hanamkonda Mandal in Warangal District was originally owned by Velupula Rama Swamy. The land which was situated within the peripheral area of Warangal Urban Agglomeration, was allegedly used for agriculture. After coming into force of Urban Land (Ceiling And Regulation) Act, 1976 ('the Act' for brevity) with effect from 01-02-1975 in State of Andhra Pradesh, the land owner filed a declaration under Section 6 (1) of the Act before the second respondent namely Special Officer and Competent Authority (ULC) Warangal. The second respondent after conducting necessary enquiry issued final orders under Sections 8 (4) and 9 (1) of the Act determining 25,000 Sq. yards as surplus vacant land, the same became final. Velupula Rama Swamy died in 2002. The second respondent issued a notification under Section 10 (3) of the Act on 19-10-2002 to the effect that the surplus vacant land vests absolutely in the State Government free from all encumbrances. In June, 2004, the second respondent also issued notice under Section 10 (5) of the Act for taking possession of the surplus vacant land.

After, the second respondent issued orders under Section 8 (4) determining the surplus vacant land held by Rama Swamy, the petitioners purchased various extents of lands admeasuring 1760 Sq.yards through registered sale deeds. The petitioners allege that they are in continuous possession of the land demised under sale deeds. Be that as it is, the petitioners now allege that prior to filing of the writ petition, third respondent along with officials of Survey Department visited the lands and on enquiry informed that the land is a surplus vacant land and therefore, the measurements are being taken. The petitioners contend that the land is agricultural land, that it is not a vacant land as defined in Section 2 (q) and not urban land as defined in Section 2 (o) and that Rama Swamy had also requested for exemption of the lands from the provisions of the Act stating that he had one major brother Velupula Verramallu, two minor sons and one daughter by the date of filing of the declaration. The petitioners also contend that by the reason of the orders issued by the Government in G.O.Ms.No.733 dated 31-03-1988 and G.O.Ms.No.209 dated 01-06-1999, the land in various survey numbers as mentioned above cannot be treated as urban vacant land as it is exempted to the extent of five acres under two Government orders. In the writ affidavit a reference also made to **Nalla Yakoob v The Govt. of A.P** and **P.S.Rao v The Special Officer and Competent Authority**. The factual position in other four writ petitions is the same.

In W.P.No.18134 of 2005 the five petitioners purchased the land in Sy.Nos.179/3, 180/5, 181/6, 182/6 and 227 of Shyampet village from the Medishetti Ailamma under registered sale deeds. The total extent of land in these survey numbers is Acs.8.20 gts and after the land holder filed a declaration, the Special Officer determined 56781 Sq.mtrs as surplus vacant land by an order dated 27-09-1981 (as seen from the proceedings of the second respondent as well as the final statement under Section 8 (4)). The petitioners came to know that the land was treated as surplus vacant land when the third respondent and others came to the land and for measuring the same. The various contentions raised in this writ petition also similar.

The learned counsel for the petitioners Sri. N.Subba Reddy submits that when once the land is exempted by a reason of G.O.Ms.No.733 dated 31-10-1988 is clarified in

G.O.Ms.No.209 dated 01-06-1989, the land situated in peripheral area of urban agglomeration stands exempted from the provisions of the Act and therefore, the land cannot be treated as urban vacant land attracting the provisions of the Act. He placed strong reliance on the two decisions referred to herein above. He also placed reliance on the decision of the Supreme Court in **Special Officer and Competent Authority, Urban Land Ceilings v P.S.Rao, Smt.M.Sarojini v Government of A.P.,** and **M.V.S.Satyanarayana v Government of A.P.**

The learned Assistant Government Pleader for Revenue (Urban Land Ceiling) Sri A.Hari Prasad Reddy submits that the petitioners are not maintainable as they are filed on apprehension. He further submits that the certificates obtained by the holder of the land under Section 2 (o) of the Act were not placed before the second respondent at the time of the enquiry into the declaration, that by the time of the sale was affected in favour of the petitioners, the land vested in the State Government, that G.O.Ms.No.733 was not in existence and that after 24 years, the petitioners are challenging the decision of the Special Officer, treating the land as urban vacant land without following the alternate remedy. He also submits that one of the purchasers of the land filed an appeal before Chief Commissioner for land Administration, which is pending.

As seen from the above, the petitioners in W.P.No.18134 of 2005 allegedly purchased the land from Medishetti Ailamma under registered sale deed executed in 1993. In other writ petitions, the property was purchased by the petitioners from Velupula Rama Swamy, the original land holder in 1981. This aspect of the matter has to be kept in mind, before considering the submissions of the learned counsel for the petitioners. It is needless to point out that Section 3 of the Act prohibits any person to hold vacant land in excess of the ceiling limit as mentioned in Section 4 thereof. Section 5 prohibits any person having vacant land in excess of the ceiling limit from transferring such land by way of sale, mortgage, gift, and lease or by any other transfer. Section 5 (2) renders all such transfers null and void. By a reason of these provisions, the sale affected by Velupula Rama Swamy under registered sale deed executed in 1981 is void sale and cannot be recognized in law. The sale transaction being void, the petitioners cannot be said to have derived any title. By reason of certificate issued by second respondent (on 26-02-1980 and 21-09-1980) to the effect that the land in various survey numbers is recorded in the revenue register as agricultural lands, the landholder would not get right to sell agricultural land as house sites. The moment, the land is sold for house sites, it ceases to be agricultural land attracting the provisions of the Act. Therefore, the petitioners cannot be said to have any grievance to approach this Court.

It is axiomatic that a citizen can invoke the jurisdiction of this Court either to enforce a right or to compel a statutory authority or the public authority to discharge public duties. A person/persons who claim some right by a reason of void transaction, cannot be said to have any enforceable right. Law Courts and the Constitution Courts can only enforce the legal rights or, contractual rights or common law rights. Courts, however, are not entitled to enforce non-existing rights. It is well settled that a writ would not be issued, the effect of which would be to validate an illegal or void action or order. Further more, writ petitions are filed on mere

apprehension. Even according to the petitioners, the third respondent along with survey officials only visited to measure the land. Respondents did not initiate any adversarial enquiry against petitioners.

In so far as the affect of G.O.Ms.No.733 dated 31-10-1988 and G.O.Ms.No.209 dated 01-06-1989 are concerned, the submission made by the learned counsel for the petitioners is devoid of any merit. Paragraph No.6 of G.O.Ms.No.733 reads as under.

> "Now, therefore, in exercise of the powers conferred under Section 20 (1) (a) of the Urban Land (Ceiling and regulation) Act, 1976 and of all other powers hereunto enabling and in suppression of all other orders issued previously in this behalf from time to time, the Government of Andhra Pradesh hereby accord:
>
> a. Exemption of the vacant land or the agricultural land which is likely to be used for non-agricultural purposes at the option of the holder thereof, or, both, to a maximum extent of five acres situated within the peripheral area as specified in column (3) of Schedule-I to the Urban Land (Ceiling and Regulation) Act, 1976 of the Hyderabad Urban Agglomeration, Visakhapatnam Urban Agglomeration, Vijayawada Urban Agglomeration, Guntur and Warangal Urban Agglomerations in excess of the ceiling limit, from the provisions of Chapter III of the said Act; and
>
> b. Permission to transfer any such land or part thereof by a person by way of sale, mortgage, gift, lease or otherwise, to the extent of five acres of land in excess of ceiling limit., excluding the area required for roads, hospitals and for other public use."

The term " to hold" is defiled in Section 2 (l) as to own the land, or to possess the land as owner, tenant, mortgage, under GPA, or under hire-purchase agreement, as on the date of coming into force of the Act. The person who purchased the land governed by the provisions of the Act, after coming into force of the Act is not a person who can be called to hold the land. Be it noted, that by a reason of Sections 3, 5 (1) and 5 (2) of the Act any transaction for transfer of urban vacant land is void and the person cannot be termed as "holder" of the land. When the Government issued G.O.Ms.No.733, they were aware of this clear distinction. That is the reason why Para No.6 (a) of G.O.Ms.No.733 exempts the vacant land, which is likely to be used for non-agricultural purposes at the option of the holder. It indicates two things. First, the land remained and continued to remain till October, 1988 as agricultural land in the peripheral area and secondly, the holder of such land wants to convert it into land for
non-agricultural purpose. If, by the time of issue of G.O.Ms.No.733 dated 31-10-

1988, agricultural land in peripheral area ceased to be as such, the Government Order has no application. In this case, admittedly, the declarants sold the land prior to coming into force of G.O.Ms.No.733 dated 31-10-1988. However, in W.P.No.18134 of 2005, the petitioners purchased the land under registered sale deeds in 1993 and therefore, their case stand on a different footing. This has to be considered by authorities under the Act. The case of the writ petitioners in other writ petitions is concerned they cannot be heard to say that the land they purchased prior to 31-10-1988 stands exempted from the provisions of the Act. In all the decisions sited by the learned counsel for the petitioners, as rightly pointed out that by the learned Assistant Government Pleader, the original holders of the land who filed declarations, sought the relief from this Court to the affect that without anything else the land stands exempted from the provisions of the Act by a reason of G.O.Ms.No.733 and G.O.Ms.No.209. In the present cases the facts are different.

The petitioners claim that they are in possession of the land on the date of their purchase by a reason of registered sale deed. Therefore, the petitioners can as well avail the benefit of the Government orders in G.O.Ms.No.455 where under the Government introduced the scheme for regularization of sale transactions of the land covered by the provisions of the Act. The petitioners are given liberty to avail such redressal.

In so far as these writ petitions are concerned it is not necessary for this Court to going to other submissions. The petitioners in W.P.No.18134 of 2005 are given liberty to approach the appellate authority under Section 33 as and when the second respondent issues any proceedings adverse to the interest of the petitioners.

Accordingly, the Writ Petition No.18134 of 2005 is disposed of with observations as above and the Writ Petition Nos. 17759, 18133, 18192 18516 and 18518 of 2005 are dismissed.

_____

(V.V.S.RAO,J)

.09.2005.

mrb